No. 06-6911

MAY 25 2007
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

JAMES D. LOGAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

JOINT APPENDIX

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN
(Madison)

Case No. 05-CR-0088-S-01

UNITED STATES OF AMERICA,
Plaintiffs,

v.

JAMES D. LOGAN,
Defendant.

DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
06/06/2005	1	COMPLAINT
06/06/2005		WARRANT ISSUED 6/2/05.
06/22/2005	2	JS 45
06/22/2005	3	INDICTMENT
06/23/2005		ARRAIGNMENT SET FOR 7/19/05, 10 AM.
06/27/2005	4	NOTICE OF APPEARANCE BY ATTY. RICHARD COAD.
06/28/2005	5	APPLICATION AND ORDER FOR WHCAP FOR DEFT. APPEARANCE ON 7/19/05; WRIT ISSUED-DELIVERED TO USMS.
07/19/2005	6	CTRM. MIN: ARRG.; N.G. PLEA ENTERED; SCHEDULE SET; DEFT. DETAINED. (SLC) 15"
07/20/2005	7	WRIT W/USMS RETURN RE: 7/19/05 ARRG. HRG.

DATE	NO.	PROCEEDINGS
07/21/2005	8	ORDER SCHEDULING. (SLC)
07/21/2005	9	ORDER OF DETENTION PENDING TRIAL. (SLC)
07/27/2005	10	APPLICATION/ORDER FOR WHCAT FOR DEFT. 8/31/05 HRG; WRIT ISSUED; DELIVERED TO USMS FOR SERVICE. (SLC) CC MLD.
07/27/2005	11	APPLICATION/ORDER FOR WHCAT FOR DEFT. 9/30/05 HRG.; WRIT ISSUED; DELIVERED TO USMS FOR SERVICE. (SLC) CC MLD.
07/27/2005	12	APPLICATION/ORDER FOR WHCAT FOR DEFT. 10/7/05 HRG.; WRIT ISSUED; DELIVERED TO USMS FOR SERVICE. (SLC) CC MLD.
07/27/2005	13	APPLICATION/ORDER FOR WHCAT FOR DEFT. 10/11/05 HRG.; WRIT ISSUED; DELIVERED TO USMS FOR SERVICE. (SLC) CC MLD.
09/02/2005	14	WRIT RETURNED UNEXECUTED FOR DEFT. 8/31/05 APPEARANCE; HEARING HELD TELEPHONICALLY.
09/06/2005	15	PTC ORDER (SLC)
09/20/2005		PLEA HEARING SET FOR 9/28/05 AT 1:15 PM.
09/28/2005	16	CTRM. MIN: PLEA HRG.; GUILTY PLEA ENTERED; PSR DUE 11/9/05, OBJ. DUE 11/23/05, SCTG. 12/7/05 AT 1:15 PM. 28"
09/28/2005	17	PLEA AGREEMENT

DATE	NO.	PROCEEDINGS
10/03/2005	18	WRIT RETURNED UNEXECUTED RE: 10/11/05 HRG; DEFT. ENTERED GUILTY PLEA.
10/03/2005	19	WRIT W/USMS RETURN; AS TO DEFT. 9/28/05 HRG.
10/03/2005	20	WRIT RETURNED UNEXECUTED RE: 10/7/05; DEFT. ENTERED GUILTY PLEA.
11/23/2005		RECD. GOVT. LETTER STATING NO OBJ. TO PSR; DELIVERED TO JCS.
12/02/2005		RECD. DEFT. SENTENCING MEMORANDUM; DELIVERED TO BBC.
2/05/2005	21	APPLICATION AND ORDER FOR WHCAP FOR DEFT. APP. ON 12/7/05; WRIT ISSUED; DELIVERED TO USMS FOR SERVICE. (SLC) CC MLD.
12/07/2005	22	CTRM. MIN: STCG.; PLEA AGREEMENT REJECTED; MATTER TO BE SET FOR SCHEDULING. 12"
12/08/2005	23	ORDER REJECTING PLEA AGREEMENT; HEARING TO BE SET.
12/08/2005	24	WRIT W/USMS RETURN.
12/13/2005		SENTENCING HRG. SET FOR 12/16/05 AT 2:30 PM.
12/15/2005		GOVT. SENTENCING MEMORANDUM.
12/16/2005	25	APPLICATION AND ORDER FOR WHCAP FOR DEFT. APP. ON 12/16/05; WRIT ISSUED; DELIVERED TO USMS FOR SERVICE. (TMO) CC MLD.
12/16/2005	26	CTRM. MIN: STCG.; CT. 1: CBOP 180 MOS.; 3 YRS. S/R; $100 CA; DEFT. DETAINED. 25"

DATE	NO.	PROCEEDINGS
12/19/2005	27	JUDGMENT AND COMMITMENT ENTERED. CC MLD.
12/20/2005	28	WRIT W/USMS RETURN.
12/22/2005	29	NOTICE OF APPEAL BY DEFT. NO FEE PAID, DS FILED, SR SENT CC:PARTIES (05-4722)
12/23/2005	30	COPY OF PSR W/ATTACHMENTS. (SEALED)
12/23/2005	31	COPY OF SENT RECOMM W/STATEMENT OF REASONS. (SEALED)
12/23/2005		RECORD PREPARED
01/13/2006	32	TRANSCRIPT OF PLEA HEARING, HELD 9/28/05.
01/13/2006	33	TRANSCRIPT OF SENTENCING, HELD 12/7/05.
01/13/2006	34	TRANSCRIPT OF SENTENCING, HELD 12/16/05.
04/20/2006		RECORD SENT
08/01/2006	35	JUDGMENT FROM THE USCA AFFIRMING THE DIST CRT. (05-4722) RECORD RETURNED

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Case No. 05-4722

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

JAMES D. LOGAN,
Defendant-Appellant.

DOCKET ENTRIES

DATE	PROCEEDINGS
12/22/05	Criminal case docketed. [05-4722] [1936792-1] Transcript information sheet due 1/3/06. Appellant's brief due 1/31/06 for James D. Logan. (amyd)
12/22/05	Filed Appellant James D. Logan docketing statement. [05-4722] [1936796-1] (amyd)
12/27/05	Filed Seventh Circuit Transcript Information Sheet by Richard A. Coad for Appellant James D. Logan. [05-4722] [1936792-1] (trot)
1/9/06	Filed motion by Appellant James D. Logan to extend time to file appellant's brief. [1941269-1] [05-4722] (stef)
1/12/06	ORDER issued GRANTING motion for extension of time to file appellant's brief. [1941269-1] JKL [05-4722] 1. Appellant's brief due 3/2/06 for James D. Logan. 2. The appellee(s) brief is due on or before 4/3/06 for USA. 3. The reply brief, if any, is due 4/17/06 for James D. Logan. (kell)

DATE	PROCEEDINGS
3/2/06	Filed 15c appellant's brief by James D. Logan. Disk filed. [05-4722] [0-0] (stef)
3/2/06	Disclosure Statement filed by Richard A. Coad for Appellant James D. Logan. [05-4722] [1936792-1] (kell)
4/4/06	Filed 15c appellee's brief by USA. Disk filed. [05-4722] [0-0] (ocon)
4/20/06	ORDER: Argument set for Thursday, June 8, 2006 at 10:30 a.m. Each side limited to 10 minutes. [05-4722] [1977546-1] (andb)
4/26/06	Original record on appeal filed. Contents of record: 1 vol. pleadings; 3 vol. transcripts; 2 envelopes in camera. [05-4722] [1979134-1] (kuzi)
5/8/06	Oral argument confirmation card filed by attorney(s) Rita M. Rumbelow for Appellee USA. [05-4722] [1936792-1] (scze)
5/25/06	Oral argument confirmation card filed by attorney(s) Richard A. Coad for Appellant James D. Logan. [05-4722] [1936792-1] (scze)
6/8/06	Case heard and taken under advisement by panel: Circuit Judge Frank H. Easterbrook, Circuit Judge Ilana D. Rovner, Circuit Judge Terence T. Evans. [05-4722] [1993631-1] (josh)
6/8/06	Case argued by Richard A. Coad for Appellant James D. Logan, Rita M. Rumbelow for Appellee USA. [05-4722] [1936792-1] (josh)
7/6/06	Filed opinion of the court by Judge EASTERBROOK. AFFIRMED. Circuit Judge Frank H. Easterbrook, Circuit Judge Ilana D. Rovner,

DATE	PROCEEDINGS
	Circuit Judge Terence T. Evans. [05-4722] [1936792-1] (mank)
7/6/06	ORDER: Final judgment filed per opinion. With costs: n. [05-4722] [2002132-1] (mank)
7/28/06	MANDATE ISSUED AND ENTIRE RECORD RETURNED. (Contents returned: 1 vol. pleadings; 3 vol. transcripts; 2 in camera envelopes) [05-4722] [0-0] (stef)
8/7/06	Filed mandate receipt. [05-4722] [2012882-1] (scze)
10/10/06	Filed notice from the Supreme Court of the filing of a Petition for Writ of Certiorari. Supreme Court Case No.: 06-6911. [05-4722] [2033541-1] (hudk)
2/27/07	Filed order from the Supreme Court GRANTING the motion for leave to proceed in forma pauperis and the Petition for a Writ of Certiorari. Supreme Court Case No.: 06-6911. [05-4722] [2086354-1] (jame)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

Case No. 05-CR-0088-S-01

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES D. LOGAN,

Defendant.

Madison, Wisconsin
September 28, 2005
1:15 p.m.

TRANSCRIPT OF PLEA HEARING
HELD BEFORE THE HONORABLE JOHN C. SHABAZ

[14] * * * *

The Court: At this time Ms. Rumbelow will be asked to provide us the essential elements of the offense, that is, what the government would be required to prove at trial, and explain the facts constituting a crime so that the jury would then determine your guilt beyond a reasonable doubt. Is that your understanding—Well, you probably aren't aware of that. So listen to those comments provided to us by the United States Attorney, Ms. Rumbelow.

MS. RUMBELOW: Your Honor, to establish a violation of Title 18 United States Code Section 922(g)(1) the government has to prove three essential elements. First, that prior to May 31st, 2005 the defendant had been convicted of a crime punishable by a term of imprisonment exceeding one year. Second, that on May 31st, 2005 he knowingly and unlawfully possessed a firearm. Third, that the firearm had previously traveled in interstate commerce.

Had this case gone to trial officers with the Beloit, Wisconsin Police Department would have testified that on May 31st, 2005 they responded to a call at the residence of Asenath, A-S-E-N-A-T-H, Wilson. When the officers arrived at the residence they encountered both Asenath Wilson and the defendant, James Logan. Asenath Wilson would have testified that she had a relationship with Mr. Logan, she had seen him in [15] possession of a handgun, and that he usually carried the handgun in his car.

Officers would have testified that they asked Mr. Logan for consent to search his car. He stated that he usually could not get the glove box open but he did consent to the search of the car. Officers would have testified that a search of the car then belonging to James Logan revealed a Norinco 9mm pistol, Serial No. 22008471 in a hidden compartment behind the glove box. The government would have introduced the fact that Mr. Logan had previously been convicted of a felony offense, that being unlawful possession of a controlled substance, in 1991, Boone County, Illinois.

William Baudhuin from the Bureau of Alcohol, Tobacco, Firearms and Explosives would have testified that the Norinco was manufactured in China. And the government would have asked the Court to take judicial notice that Beloit is in the Western District of Wisconsin.

THE COURT: The Court does take judicial notice that Beloit is in the Western District of Wisconsin.

Mr. Logan, prior to May 31 of 2005 had you been convicted of a crime punishable by a term of imprisonment exceeding one year?

DEFENDANT LOGAN: Yes, sir.

THE COURT: And where were you convicted? In Illinois? Of that crime?

[16] DEFENDANT LOGAN: It was in Wisconsin. Yes, it's Illinois.

THE COURT: Illinois?

DEFENDANT LOGAN: Yes.

THE COURT: Do you recall what the crime was?

DEFENDANT LOGAN: No, not offhand.

THE COURT: But you do understand that you were convicted of a felony, is that correct?

DEFENDANT LOGAN: Yes, sir.

THE COURT: And do you understand that for that crime you were subject to a term of imprisonment exceeding one year? Is that your understanding as well?

DEFENDANT LOGAN: Yes, sir.

THE COURT: And on May 31 of 2005 did you knowingly and unlawfully possess a Norinco 9mm pistol, Serial No. 22008471?

DEFENDANT LOGAN: Yes, sir.

THE COURT: And was that firearm in the glove compartment of your automobile?

DEFENDANT LOGAN: Yes, sir.

THE COURT: And had you been a convicted felon at that time?

DEFENDANT LOGAN: Yes, sir.

THE COURT: And do you understand that this firearm having been manufactured in China and found in the United States [17] then had previously traveled in interstate commerce? Do you understand that?

DEFENDANT LOGAN: Yes, sir.

THE COURT: And did the officers come to Ms. Wilson's place of residence and arrest you?

DEFENDANT LOGAN: Yes, sir.

THE COURT: And did that then come to a search of your automobile?

DEFENDANT LOGAN: Yes, sir.

THE COURT: Did you give consent to that search?

DEFENDANT LOGAN: Yes, sir.

THE COURT: Anything further?

MS. RUMBELOW: Your Honor, I would like the record to reflect that this did not occur in Beloit, Wisconsin, it occurred in Janesville, Wisconsin. And I would ask the Court to take judicial notice that Janesville is in the Western District of Wisconsin.

THE COURT: Do you know where this search took place, what city?

DEFENDANT LOGAN: Yes, sir.

THE COURT: Was it Janesville?

DEFENDANT LOGAN: Yes, sir.

THE COURT: Janesville, Wisconsin?

DEFENDANT LOGAN: Yes, sir.

THE COURT: The Court does determine that Janesville, [18] as with Beloit, is in the Western District of Wisconsin, although I do believe both of them are in Rook County, but the fact is one is some distance away from the other, and the Court will find judicial notice. Anything further?

MS. RUMBELOW: No, Your Honor.

THE COURT: The Court then at this time will advise the defendant, Mr. Logan, if you plead guilty a presentence report

will be prepared and you will then—and the Court will then consider whether or not to accept the plea agreement. If it decides to reject the plea agreement, you will then have an opportunity to withdraw your plea and change it to not guilty. Do you understand that?

DEFENDANT LOGAN: Yes.

THE COURT: And do you disagree with anything other than the Beloit-Janesville difference which was offered to us by Ms. Rumbelow?

DEFENDANT LOGAN: No.

THE COURT: Do you accept all of those facts as stated?

DEFENDANT LOGAN: Yes, sir.

THE COURT: How then do you now plead to the charge which is pending against, you, guilty or not guilty?

DEFENDANT LOGAN: I plead guilty.

THE COURT: It's the finding of the Court in the case of United States of America against James D. Logan, 5-CR-088-S, [19] that the defendant, James D. Logan, is fully competent and capable of entering an informed plea, that he is aware of the nature of the charge and the consequences of the plea, and that the plea of guilty is a knowing and voluntary plea supported by an independent basis in fact containing each of the essential elements of the offense. The plea accordingly is accepted and defendant is now adjudged guilty of that offense set forth in Count 1 of the Indictment pending against him.

* * * *

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

Case No. 05-CR-0088-S-01

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JAMES D. LOGAN,
Defendant.

Madison, Wisconsin
December 16, 2005
2:30 p.m.

TRANSCRIPT OF SENTENCING
HELD BEFORE THE HONORABLE JOHN C. SHABAZ

* * * *

[2] THE COURT: All right. Why don't we then begin where we left off the last time we were together. You'll recall that the defendant had previously entered into a plea agreement and pled guilty to a one-count Indictment with the understanding that the maximum statutory imprisonment term was 10 years. The presentence investigation revealed details of his criminal history that indicated to the Court that the defendant could have been subject to the enhanced penalties under 18 United [3] States Code Section 924(e) which requires a minimum mandatory imprisonment term of 15 years. The armed career criminal provisions under United States Sentencing Guidelines Section 4B1.4 would then be applicable. These provisions of course would be subject—would subject the defendant to an advisory guideline imprisonment range of 135

to 168 months. However, the minimum sentence would be 180 months as required by statute.

With this in mind the Court rejected the plea agreement on December 7, 2005, at which time defendant advised the Court he did not want to withdraw his guilty plea. The matter was adjourned until counsel could adequately consult with Mr. Logan. On December 12, 2005 defense counsel informed the government that the defendant wished to proceed with sentencing without a written plea agreement. Is that still the juncture at which we are, Mr. Coad?

MR. COAD: Yes, Judge.

THE COURT: Is that your understanding as well, Mr. Logan?

DEFENDANT LOGAN: Yes, sir.

THE COURT: And do you understand that you could, sir, be subject to the enhanced penalties in this matter as previously announced by the Court to a mandatory term of 15 years in prison? Do you understand that?

DEFENDANT LOGAN: Yes, sir,

[4] THE COURT: And knowing that, do you wish to proceed sentencing without a plea agreement?

DEFENDANT LOGAN: Yes, sir.

* * * *

[7] MR. COAD: I said I'm all right, but one thing that I don't think is cumulative to my written submission to the Court, if the Court finds that Mr. Logan—Mr. Logan's predicates or prior convictions count under armed career criminal and it accepts the government's position, under 922(g)(1) I think it's important to note that the government would be able then to prosecute individuals for run-of-the-mill felony—felon in possession of firearms under 922(g)(1) who have been convicted in Wisconsin of misdemeanors, never convicted of

felonies, who may lawfully carry a firearm under Wisconsin law. They would then be subject to federal [8] prosecution under 922(g)(1) and I think that that expands certainly to common practice now in this district and I think it would be significant. And I think that that definition applies equally to 922(g)(1) and that changes the scope of that statute in my view. And that's all I have, Judge.

THE COURT: Response.

MS. RUMBELOW: It would ultimately if the Seventh Circuit—I mean, it depends on what the Court rules today and then if we end up at the Seventh Circuit on the issue. But just assuming for sake of argument that that's where we find ourselves, you know, six months, nine months from now, the Seventh Circuit will ultimately decide it and it's really not relevant for purposes of—for today's purposes it's not relevant to how the government decides in the future to bring about 922(d) indictments.

THE COURT: All right, the Court accepts the defendant's guilty plea. It is my understanding he has continued to enter a plea without a plea agreement. The Court then does accept that guilty plea and will proceed with sentencing absent a written plea agreement. In doing so, defendant is aware of the possibility that he is subject to a statutory minimum of 15 years and a maximum of life imprisonment pursuant to 18 United States Code Section 924(e).

In light of the Supreme Court's decision in *Booker* the Court will use the sentencing guidelines in this case for [9] advisory purposes only and will consider as well the statutory purposes of sentencing which are set out in 18 United States Code Section 3553(a). In *McReynolds against United States* the Seventh Circuit Court of Appeals ruled that the remedial portion of *Booker* which holds that decisions about sentencing factors will continue to be made by judges, on the preponderance of the evidence, is an approach that comports

with the Sixth Amendment so long as the guideline system has some flexibility in its application.

The amended advisory guideline calculations using the November 2005 Guidelines Manual provide that the criminal history category of V has been reduced to Category IV based on the omission of two points that had been assessed in paragraph 36 of the presentence investigation report. The two points are not counted because the conviction is outside the applicable time period allowed under Section 4A1.2(e)(2). The advisory guideline calculations take into account all of defendant's relevant conduct as defined in Section 1B1.3.

These calculations start with a base offense 20 under Section 2K2.1(a)(4)(A) because the defendant committed the offense subsequent to sustaining a violent felony conviction. The subtotal of the offense level would ordinarily be 20. However, he is subject to an enhanced sentence under the provisions of 18 United States Code Section 924(e) and is also considered an armed career criminal under the provisions of [10] 4B1.4.

The Court finds that the defendant has three prior felony convictions for crimes of violence. Specifically, battery as a repeater, Rock County Circuit Court Case No. 87-CR-933. Battery as a repeater, Rock County Circuit Court Case No. 88-CR-817. And battery habitual criminality, Rock County Circuit Court Case No. 00-CM-371. Under Section 4B1.4(b)(3)(B) this results in a subtotal offense level 33. A two-level reduction is applicable under 3E1(a) for acceptance of responsibility. And based on the government's motion if it is to made, an additional one-level reduction under (b).

MS. RUMBELOW: It is, Your Honor.

THE COURT: That is ordered because the defendant provided timely notification of his intention to enter a guilty plea. Under Section 2B1.4(c)(4) the defendant's criminal history category remains at IV. Accordingly, pairing a total

offense level of 30 with a criminal history category of IV results in an advisory guideline imprisonment range of 135 to 168 months. However, a minimum 15-year or 180-month imprisonment term is required under 18 United States Code Section 924(e).

Any further comments that either counsel or the defendant wishes to make before sentencing? Mr. Logan.

DEFENDANT LOGAN: No, sir.

THE COURT: Mr. Coad.

[11] MR. COAD: Briefly, Judge, I think 180 months is enough. It's above the advisory guideline range. Taking into account Mr. Logan's struggle with his heroin addiction which I think contributes a lot to his inability to comport with the law. He's accepted responsibility, hasn't wavered. There's no aggravating circumstances here, the use or threatened use of a gun. I would ask the Court not to impose a fine and to keep Mr. Logan at a facility, a Bureau of Prisons facility close to the state of Wisconsin.

And in a final note, Judge, I've gotten to know Mr. Logan. His intelligence, humor and his ability to relate with people at the jail who work at the jail where he's been for so long and with me, with other people I've seen, it belies his criminal history and I'm sorry that he's faced with this penalty today. But I think that 180 months is a sufficient punishment and deterrent in this case. Thank you.

THE COURT: Ms. Rumbelow.

MS. RUMBELOW: Nothing Your Honor.

THE COURT: The defendant, James Logan, is 39 years old and a violent multi-conviction felon. He was arrested by Janesville police after they responded to a domestic disturbance complaint and recovered a loaded 9mm pistol and drug paraphernalia from his vehicle. All of his relevant conduct

has been taken into account in formulating the applicable offense level.

[12] He has a scant work history and repeatedly has relied on his barbering skills as his primary means of support. He states that he's a long-term heroin addict. At this point he admittedly has not been a part of his children's lives or provided financial support over the years, owing $95,000 in arrears for support.

He has not been deterred from committing further criminal conduct. His criminal history extends back to his adolescent years. Many of his earlier convictions were not considered in determining his criminal history category because the convictions occurred 10 years prior to the commission of this offense. He has had a number of cases, many with active warrants, that were pending when he committed this offense. The presentence report has revealed the details of his criminal history and indicated that he has not been dissuaded from his criminal conduct over the years. The Court as aforesaid rejected the plea agreement based upon his criminal record and at this time will announce the sentence.

The Court imposes the minimum 180-month imprisonment term as required by statute. Considering the nature and circumstances of the offense as well as the history and characteristics of the defendant, the Court believes this amount of time is necessary to satisfy the statutory purposes of sentencing under 18 United States Code Section 3553 which in this case is to physically incapacitate the defendant in order [13] to protect the community from his undeterred and dangerous criminal conduct. The amount of time will also afford him the opportunity to participate in vocational training and substance abuse treatment in preparation for the eventual release back into the community.

* * * *

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

[Filed DEC. 19, 2005]

Case Number: 05-CR-088-S-01
Defendant's Attorney: Richard Coad

UNITED STATES OF AMERICA,

v.

JAMES D. LOGAN.

The defendant James Logan pleaded guilty to Count 1 of the indictment.

ACCORDINGLY, the Court has adjudicated that the defendant is guilty of the following offense(s):

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 U.S.C. § 922(g)(1)	Felon in Possession of a Firearm, a Class C felony	May 31, 2005	1

The defendant is sentenced as provided in pages 2 through 6 of this judgment.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Date of Birth:	December 8, 1965
Defendant's USM No.:	05951-090
Defendant's Residence Address:	c/o Harvey Logan 1106 Henderson Street Beloit, WI 53511

Defendant's Mailing Address: c/o Rock County Jail
200 Hwy 14 East
Janesville, WI 53545

December 16, 2005
Date of Imposition of Judgment

/s/ John C. Shabaz
JOHN C. SHABAZ
District Judge

December 19, 2005
Date Signed:

IMPRISONMENT

Defendant is committed to the custody of the United States Bureau of Prisons for imprisonment for a period of 180 months.

The Court recommends the defendant consider taking advantage of the opportunity to apply for vocational training and substance abuse treatment while confined.

It is further recommended that the defendant be afforded a prerelease placement in a community corrections center with work release privileges but without home confinement during the final months of his confinement.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to_____ at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
Deputy Marshal

SUPERVISED RELEASE

Upon release from imprisonment, defendant shall be on supervised release for a term of three years.

Defendant shall report to the probation office in the district to which defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

Defendant shall not commit another federal, state, or local crime.

Defendant shall not illegally possess a controlled substance.

If defendant has been convicted of a felony, defendant shall not possess a firearm, destructive device, or other dangerous weapon while on supervised release.

Defendant shall cooperate with the collection of DNA by the U.S. Justice Department and/or the U.S. Probation and Pretrial Services Office as required by Public Law 108-405.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Financial Penalties sheet of this judgment.

Defendant shall comply with the standard conditions that have been adopted by this court (set forth on the next page).

Defendant shall also comply with the following special conditions:

(1) Provide the supervising probation officer with any requested financial information, including the timely submission of copies of his federal and state income tax returns;

(2) Register with local law enforcement agencies and the state attorney general as directed by the supervising probation officer;

(3) Submit his person, residence, office, or vehicle to a search, conducted by a U.S. probation officer, at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall advise any other residents that the premises may be subject to searches pursuant to this condition;

(4) Refrain from any association with drug users and sellers, and participate in substance abuse treatment and testing as directed by the supervising probation officer;

(5) Abstain from the use of alcohol and not patronize any establishment where the principal item of sale is alcohol; and

(6) Pay child support arrears in accordance with any court order.

STANDARD CONDITIONS OF SUPERVISION

1) Defendant shall not leave the judicial district without the permission of the court or probation officer;

2) Defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) Defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) Defendant shall support his or her dependents and meet other family responsibilities;

5) Defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) Defendant shall notify the probation officer within seventy-two hours of any change in residence or employment;

7) Defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances except as prescribed by a physician;

8) Defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) Defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

10) Defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

11) Defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) Defendant shall not enter info any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

13) As directed by the probation officer, defendant shall notify third parties of risks that may be occasioned by defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm defendant's compliance with such notification requirement.

CRIMINAL MONETARY PENALTIES

Defendant shall pay the following total financial penalties in accordance with the schedule of payments set forth below.

Count	Assessment	Fine	Restitution
	$100.00	$0.00	$0.00
Total	$100.00	$0.00	$0.00

Pursuant to 18 U.S.C. § 3013, defendant is ordered to pay a criminal assessment in the amount of $100.00. The criminal assessment is to be paid immediately to the Clerk of Court for the Western District of Wisconsin.

The defendant has neither the present means nor the earning capacity to pay a fine under § 5E1.2(c) without impairing his ability to support himself and pay his child support arrears upon release.

SCHEDULE OF PAYMENTS

Payments shall be applied in the following order:

(1) assessment;
(2) restitution;
(3) fine principal;
(4) cost of prosecution;
(5) interest;
(6) penalties.

The total fine and other monetary penalties shall be due in full immediately unless otherwise stated elsewhere.

Unless the court has expressly ordered otherwise in the special instructions above, if the judgment imposes a period of imprisonment, payment of monetary penalties shall be due during the period of imprisonment.

UNITED STATES COURT OF APPEALS
SEVENTH CIRCUIT

No. 05-4722

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

JAMES D. LOGAN,
Defendant-Appellant.

Argued June 8, 2006
Decided July 6, 2006

Before EASTERBROOK, ROVNER, and EVANS, *Circuit Judges.*

EASTERBROOK, *Circuit Judge.*

This appeal presents a single question: whether a state conviction that did not result in a deprivation of civil rights can be a predicate offense under the Armed Career Criminal Act, 18 U.S.C. § 924(e)(1). That statute enhances the penalty for gun-toting felons whose prior convictions include at least three violent crimes or serious drug offenses. A conviction that a state classifies as a misdemeanor counts if the punishment can exceed two years. 18 U.S.C. §§ 921(a)(20)(B), 924(e)(2)(B). Logan has (in addition to one concededly qualifying drug felony conviction) three battery convictions that, though called misdemeanors in Wisconsin, carried maximum terms of three years' imprisonment and are treated as "violent felonies" by § 924(e). Nonetheless, Logan maintains, they should be disregarded because the last sentence of § 921(a)(20) excludes from the definition of "conviction" any offense that "has been expunged, or set aside or for which a

person has been pardoned or has had civil rights restored . . . unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms."

Logan contends that a conviction that did not result in the loss of the rights to vote, hold public office, and serve on juries should be treated the same as a conviction following which those rights were terminated but later restored. This argument has the support of *United States v. Indelicato*, 97 F.3d 627 (1st Cir. 1996). The district court held, however, that an offender whose civil rights have been neither diminished nor returned is not a person who "has had civil rights restored". That conclusion, which has the support of *McGrath v. United States*, 60 F.3d 1005 (2d Cir. 1995), led to a 180-month sentence, the minimum for any armed career criminal.

Compelled to choose between the holding of *Indelicato* and that of *McGrath*, we take the second circuit's part. The reason is simple. The word "restore" means to give back something that had been taken away. As *McGrath* remarked, "the 'restoration' of a thing never lost or diminished is a definitional impossibility." 60 F.3d at 1007. Logan does not deny this, nor did the panel in *Indelicato*. That court recognized that it was going in the teeth of the statutory text but decided to do so because (a) it thought the statute silly—for why *should* someone whose civil rights were never taken away receive a higher federal sentence than a person who lost and then regained those rights?—and (b) no legislative history shows that Congress meant to distinguish between convicts who never lost civil rights and those who lost but regained them.

The second of these reasons is a makeweight. Statutes do not depend, for their force, on some statement in the legislative history along the lines of: "We really mean it!" See, e.g., *Swain v. Pressley*, 430 U.S. 372, 378-79, 97 S.Ct. 1224,

51 L.Ed.2d 411 (1977); *Harrison v. PPG Industries, Inc.*, 446 U.S. 578, 591-92, 100 S.Ct. 1889, 64 L.Ed.2d 525 (1980). Today's Supreme Court uses legislative history only to resolve ambiguities in enacted texts. Even the plainest legislative history does not justify going against an unambiguous enactment. See *Arlington Central School District v. Murphy*, ___ U.S. ___, ___ - ___, 126 S.Ct. 2455, 2459, 165 L.Ed.2d 526, 534 (2006); *Exxon Mobil Corp. v. Allapattah Services, Inc.*, ___ U.S. ___, ___ - ___, 125 S.Ct. 2611, 2625-27, 162 L.Ed.2d 502, 526-28 (2005). (Nor does explicit legislative history justify the creation of a legal rule on a subject about which the statute is silent. See *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446 (7th Cir.2005).) And if legislative history directly addressing a subject does not free a court from enacted language, the *absence* of legislative history cannot do so. See *Whitfield v. United States*, 543 U.S. 209, 215-16, 125 S.Ct. 687, 160 L.Ed.2d 611 (2005).

As for *Indelicato*'s first reason: this is a variant on the proposition that courts read statutes to make sense rather than nonsense. Absurd possibilities are ruled out. We call *Indelicato*'s approach a variant of the anti-absurdity canon, however, because the first circuit did not mention it—and for good reason. The statute is not absurd as written. Its text parses; there is no linguistic garble. The canon is limited to solving problems in exposition, as opposed to the harshness that a well-written but poorly conceived statute may produce. See *Jaskolski v. Daniels*, 427 F.3d 456 (7th Cir. 2005). Accord, *Robbins v. Chronister*, 435 F.3d 1238 (10th Cir. 2006) (en banc). Otherwise judges would have entirely too much leeway to follow their own policy preferences by declaring that the legislative choice is harsh or jarring. See, e.g., Adrian Vermeule, *Judging Under Uncertainty* 57-59 (2006); John Manning, *The Absurdity Doctrine*, 116 Harv. L.Rev. 2387 (2003).

The Supreme Court insists that statutes be enforced as written even when they seem mistaken or pointless—for it is exactly then that the temptation to substitute one's judgment for the legislature's is strongest. See, e.g., *Dodd v. United States*, 545 U.S. 353, 125 S.Ct. 2478, 162 L.Ed.2d 343 (2005) (the statute of limitations for collateral attacks on criminal convictions must be enforced as written even though time may expire before a challenge becomes possible, and even though this possibility likely resulted from legislative oversight); *Chapman v. United States*, 500 U.S. 453, 111 S.Ct. 1919, 114 L.Ed.2d 524 (1991) (sentence for LSD must be based on the weight of the carrier medium as well as that of the drug, even though the carrier may be hundreds of times heavier and Congress may not have understood that LSD differs from other illegal drugs in this way). Laws are not "harsh" or "pointless" in any value-free framework; they seem harsh or pointless by reference to a given judge's beliefs about how things ought to work, which is why a claim of power to revise "harsh" or "pointless" laws elevates the judicial over the legislative branch and must be resisted. See *Tyler v. Cain*, 533 U.S. 656, 663 n. 5, 121 S.Ct. 2478, 150 L.Ed.2d 632 (2001).

Indelicato assumed that judges may correct a legislature's mistakes and oversights. It did not, however, identify any source of authority to do this—or for that matter explain why this statute is a botch. True enough, someone whose civil rights have not been revoked cannot have them restored. But restoration of civil rights is just one of three ways to erase a conviction from one's record for purposes of federal law. The other two—expungement and pardon—are as available to people who never lost their rights to vote, hold office, and serve on juries, as they are to other offenders.

Section 921(a)(20) acquired its current form in 1986 as a reaction to *Dickerson v. New Banner Institute, Inc.*, 460 U.S. 103, 103 S.Ct. 986, 74 L.Ed.2d 845 (1983). *Dickerson* held

that federal rather than state law defines a "conviction" for purposes of 18 U.S.C. §§ 922 and 924, and that under federal law a conviction supports recidivist enhancements even after it has been expunged by the rendering court. The 1986 legislation makes the effect of a conviction turn on state law—with the proviso that a pardon or restoration of rights removes the conviction for federal purposes, even if state law still would count it as a criminal conviction, "unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms." That's a federal anti-mousetrapping rule overlain on state law; a person told that his civil rights have been restored may assume that this means *all* rights unless he is informed that the right to vote (and so on) does not imply a right to carry firearms. See *United States v. Erwin*, 902 F.2d 510, 512-13 (7th Cir.1990). Logan has not been misled by any state act that apparently freed him from the legal consequences of his battery convictions.

When Congress replaced *Dickerson*'s uniform federal rule with a state definition of conviction, it ensured that similarly situated people would be treated differently—for states vary widely in which if any civil rights a convict loses and whether these rights are restored. Some states deprive almost all convicts of these rights but restore them automatically after a set period. See *Caron v. United States*, 524 U.S. 308, 313-14, 118 S.Ct. 2007, 141 L.Ed.2d 303 (1998) (agreeing with appellate consensus that restoration by operation of law has the same legal effect as restoration by act of personal clemency). Others take away fewer rights and make them harder to regain. The Office of the Pardon Attorney has compiled a list of these differences that conveys the flavor, though it may be out of date. U.S. Department of Justice, *Civil disabilities of convicted felons: a state-by-state survey* (1996), available at http://www.usdoj.gov/pardon/forms/state_survey.pdf. Vermont, for example, permits felons not only to vote from prison (they get absentee ballots) but also to

hold office, but not to serve on juries; New Hampshire permits them to serve on juries but not to vote until after release (and restoration then is automatic); other states take away all three rights (plus the right to carry firearms) and don't restore them except via executive clemency. Most states would call the batteries of which Logan was convicted felonies and deprive the offender of civil rights (for in most states the dividing line between misdemeanor and felony is a maximum term of one year's imprisonment). Wisconsin ordinarily puts the dividing line lower: misdemeanor sentences can't exceed nine months in a local jail, and any time at all in the state prison system depends on a felony conviction. Wis. Stat. § 939.60. Low sentences are accompanied by a rule that misdemeanants retain the right to vote. But even a misdemeanor conviction for battery by a repeat offender can carry a three-year sentence. See Wis. Stat. § 939.62, § 940.19(*l*). No reading of § 921(a)(20) could produce identical treatment (for purposes of federal recidivist prosecutions) of people who commit the same crimes in different states.

When the first circuit in *Indelicato* combined what it perceived as an infelicitous enactment with the absence of "We really mean it!" legislative history, it was nodding in the direction of imaginative reconstruction—the idea that a court may implement what it is sure the legislature would have done (had it faced the question explicitly) rather than what the legislature actually did. The Supreme Court has anathematized that approach as democratically illegitimate, for it sets up the judiciary as the effective lawmakers. See, e.g., *West Virginia University Hospitals, Inc. v. Casey*, 499 U.S. 83, 100-01, 111 S.Ct. 1138, 113 L.Ed.2d 68 (1991) (calling imaginative reconstruction a "usurpation" that "profoundly mistakes [the judicial] role"); *Tafflin v. Levitt*, 493 U.S. 455, 461-62, 110 S.Ct. 792, 107 L.Ed.2d 887 (1990) ("Petitioners . . . insist that if Congress had considered the issue, it would have [adopted a particular rule]. This argument . . . is

misplaced, for even if we could reliably discern what Congress' intent might have been had it considered the question, we are not at liberty to so speculate"). This case illustrates the practical as well as the theoretical failings in that doctrine, for *Indelicato*'s guess about what Congress "would have done, had it thought" turns out to be wrong.

Section 922(g)(9) of the criminal code makes it unlawful for anyone "who has been convicted in any court of a misdemeanor crime of domestic violence" to possess a firearm that is connected with interstate commerce. This section has a definitional provision corresponding to § 921(a)(20). That provision, 18 U.S.C. § 921(a)(33)(B)(ii), reads: "A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms." This tracks § 921(a)(20) in treating expungement, pardon, or restoration of civil rights as canceling all effect of the conviction—but it shows that the "restoration of civil rights" clause is inapplicable to one whose civil rights were never taken away. For such persons, expungement and pardon are the only ways to regain the right to possess firearms. In other words, when Congress addressed this subject directly, it supported the second circuit's conclusion in *McGrath*, not the first circuit's prediction in *Indelicato*.

Defendants have argued that § 921(a)(33)(B)(ii) is itself absurd, and should not be applied as written, because (for example) the governor's pardon power in some states does not reach misdemeanor convictions. With one exception these arguments have been rejected, and courts have enforced this statute while noting, as *McGrath* had done for

§ 921(a)(20), that the differences in state rules can lead otherwise identical offenders to be treated differently under federal law. See *United States v. Jennings*, 323 F.3d 263, 267-69 (4th Cir. 2003); *United States v. Kirchoff*, 387 F.3d 748 (8th Cir. 2004); *United States v. Smith*, 171 F.3d 617, 624-26 (8th Cir. 1999); *United States v. Hancock*, 231 F.3d 557, 566-67 (9th Cir. 2000); *United States v. Barnes*, 295 F.3d 1354, 1368 (D.C. Cir. 2002).

The outlier is *United States v. Wegrzyn*, 305 F.3d 593 (6th Cir.2002). Persons convicted of domestic-violence misdemeanors in Michigan lose their right to vote only while incarcerated; it is restored automatically on release. Wegrzyn, who received a suspended sentence following his conviction, therefore did not lose any civil right. Without citing *McGrath, Indelicato*, or any of the earlier decisions under § 921(a)(33)—for that matter, without parsing the statutory language—the sixth circuit declared that it would be absurd to treat more harshly (under federal law) someone who received a suspended sentence in Michigan than someone who had gone to prison there (presumably for a more serious domestic battery); *Wegrzyn* refused to apply the federal statutes as enacted. This shows that even when Congress addresses a subject as directly as possible—for § 921(a)(33)(B)(ii) says point blank that people who were not deprived of their civil rights under state law differ from those whose rights were stripped and then restored—some judges still balk at applying what they find to be an unpalatable rule. *Wegrzyn*'s holding has been universally rejected by other courts that have addressed the identical question. In addition to *Jennings* and *Kirchoff*, see *United States v. Brailey*, 408 F.3d 609 (9th Cir.2005). Just as the fourth circuit's opinion in *Jennings* disparaged *Indelicato* to the extent its approach reflected on the best understanding of § 921(a)(33)(B)(ii), so we disapprove *Wegrzyn* to the extent its approach bears on the best understanding of § 921(a)(20). Both of these statutes create ample potential for disparate treatment, but that's inherent in

the legislative choice to make federal sentences depend on the states' different (and often internally inconsistent) approaches to revoking and restoring civil rights.

What a federal court *can* do, as a uniform matter, is count all state convictions unless the state extends a measure of forgiveness. The last sentence of § 921(a)(20) specifies how forgiveness is to be conveyed: pardon, expungement, or a restoration of civil rights. Logan's battery convictions did not qualify for the third means (though he *had* lost his civil rights in Wisconsin on account of his drug offense and never got them back) but potentially qualified for the first and second. So far as this record reveals, however, Logan never sought expungement or a pardon (and we know that, if he sought one, he did not obtain that boon). Wisconsin has neither forgiven him nor misled him about the (federal) consequences of his convictions, and as his convictions are serious enough to come within the federal definition of violent felonies they require sentencing as a recidivist under the Armed Career Criminal Act.

AFFIRMED.